

of 19  
Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,

PLAINTIFF,

-VS-

TIM HOLOHAN, ET AL.,

DEFENDANTS.

**A**

**FIELD**

'07 APR 18 A11:39

CLERK  
U.S. DISTRICT COURT

CIVIL ACTION NO. 04-253 (ERIE)

JUDGE: SEAN J. MCLAUGHLIN

MAGISTRATE JUDGE: Susan P. Baxter

## PLAINTIFF'S NARRATIVE WRITTEN STATEMENT

OF FACTS FOR TRIAL TO BE ENTERED BY ORAL AND DOCUMENTARY EVIDENCE

WITH WITNESS LIST AND EXHIBIT LIST ATTACHED

1. NOW COMES Juan Davila-Bajana, Pro Se (Plaintiff); and hereby respectfully submits his above Titled Plaintiff's Narrative Statement pursuant to Magistrate Judge Susan Baxter's (Judge Baxter) Case Management Order of August 23rd, 2006. This Statement is supplied to the Court as an Exhibit to Plaintiff's recently filed Show of Cause out-of-time; but as set forth in the body of the Show of Cause, Plaintiff asserts that no party has been prejudiced and therefore the Court is well within its discretion to allow Plaintiff's Narrative at this time.

## PROCEDURAL BACKGROUND

2. Plaintiff has filed the instant Civil Action in this Court seeking redress for the Defendants, all Federal Bureau

of Prisons (BOP) employees, violation of his First Amendment Right to freedom of speech and to seek redress in Court. It is well settled that a BOP employee may not take a retaliatory action against a prisoner simply because he complains of, or reports on, unsafe and unhealthy conditions, at his prison job.

3. In fact, even if a BOP employee can state a justifiable reason for the action(s); it may still constitute a cause of action in federal court if the action(s) are done for simple retaliation. In plain words, if the act(s) can be shown to have been motivated by personal gain, and not because of a penalogical interests, the Defendant(s) are nonetheless liable to the Plaintiff.

4. At this time the Plaintiff has survived one Motion to Dismiss, or in the alternative, Summary Judgement (First Summary Judgement); same having been directed towards the Claims that were set forth in the Original Complaint. And this Court has let stand for Trial the Second Claim of Retaliation and Discovery has been completed with respect to same.

5. Said Discovery including Interrogatories from both the Defendants and Plaintiff, along with the Answers to same, having been provided to the opposing party. Also, the Defendants have provided the Plaintiff with an "Answer" to his Complaint.

6. In the interim, the Defendants have filed a Motion to Dismiss, or in the alternative, Summary Judgement (Second Summary Judgement). This Motion is still pending before the Court and Plaintiff deems that same will be Denied simply because the Defendants own Exhibits to same clearly show that it "fails-on-its-face". Notwithstanding that the "Defense" that is being proffered is not "in line" with the Claim(s) and/or the Answer

as provided by the Defendants.

7. Moreover, Plaintiff will state again for the Record that he is presently researching for the expected upcoming Discovery Order from the Court. This is premised upon the fact that the Defendants have raised a novel and absolutely different defense in their Second Summary Judgement Motion -- and as argued in the Response to same, Plaintiff now deems that if he must refute this at Trial he will have need of further Discovery.

NARRATIVE STATEMENT OF FACTS TO BE OFFERED AT TRIAL

8. At the time of the underlying employment at his Federal Prison Industries (FPI) (UNICOR) job; Plaintiff worked at the factory in Federal Correctional Institute McKean (FCI McKean). Plaintiff held a number of jobs at the factory during his tenure there and had worked there for some \_\_\_\_ months at the time of the conditions that were present which resulted in his finally having filed the Grievance on the conditions.

9. Prior to Plaintiff having filed his Grievance on the conditions at the Factory, there were other inmates who had filed grievances on the conditions -- both the second hand smoke and silica dust. In fact, this was a discussion of frequent occurrence at the Factory and was talked about at the Factory during breaks and at other times among the inmate workers. And I personally engaged in the discussion of the conditions and what should be done about them and who should be told.

10. Because of this I was in the company of some of the other inmates who filed grievances on the Factory conditions throughout the Factory. So I was seen in their company by numerous staff, both foreman and other administrative staff while they

were walking the floor. This is, upon information and belief, with respect to all the Defendants, as well as the other staff at the prison who made rounds at the UNICOR Factory.

11. This all took place before I was asked to leave the factory by Defendant English one evening on \_\_\_\_/\_\_\_\_/\_\_\_\_. At that time Defendant English did not explain as to why I, and two other inmates, were asked to return to our housing units. But he only stated that "your luck to still have a job. Watch the call-out for your change to day shift."

12. The next day I was called to the Captain's Office and was questioned about a piece of scrap plastic that was alleged to have been found in the "general vicinity of my work area". This was not within my personal work area, and in fact was not directly in any inmate's work area. But the other inmates, \_\_\_\_\_ and \_\_\_\_\_, who were also asked to return to the housing unit and were also questioned about this piece of plastic.

13. None of us were placed under investigation nor did we receive an incident report for violation of any BOP policy. And, in fact, inmate \_\_\_\_\_, filed a Grievance on his release from UNICOR without any reason or incident report and was given his job back. The other inmate, \_\_\_\_\_, was close to being released and did not bother to try to get his UNICOR job back.

14. I personally talked to Defendant Forsyth at the dining hall during the noon meal and she continually told me that she would "look into it". This went on for a few weeks until she finally left the institution for another job at another prison.

But she did not specifically tell me that I had not chance of getting my job back.

15. But in the mean time while I was told to "watch the call-out" for my transfer to the day-shift, which never materialized, I filed a Grievance against the Defendants at the factory for retaliation. That is the Grievance which I exhausted and filed the underlying Complaint on for this action. And at this time the Claim which has survived the Summary Judgement Motion by the Defendants is the Claim of Retaliation.

16. At the time I filed my Grievance I was under the impression and understanding that I had been removed from UNICOR for complaining of the Factory conditions. Even though I did not actually file the Grievance before I was told to go back to the housing unit by Defendant English; I had been seen by him and the other Defendants with the inmates who filed grievances on the Factory conditions.

17. So it was understood by all concerned that I too would be filing a Grievance on the conditions at the factory. And I felt that the reason that I was asked to leave the Factory that night was simply so that they could have me removed from UNICOR before I actually filed my Grievance. And that this would be reason for them to use against me in response to my Grievance and in court -- I was not working at UNICOR, so the Factory conditions are not my concern.

18. And as I continued to seek return to my UNICOR Factory job, I began to understand that I was now going to have trouble simply because of the Grievance. This was made known to me by Defendant Housler at the time that I agreed to withdraw my original Grievance on the second hand smoke and silica dust.

19. But even more telling was after Defendant Forsyth left McKean and Defendant Holohan became acting Superintendent of Industries (SOI) at FCI McKean UNICOR. He told me in straight language that "someone doesn't like you and your not going to get your job back". Yet the same Defendant Sapko, who was present when the Original Grievance on the Factory conditions was withdrawn in front of Safety Manager (Defendant) Housler, has now offered to place me in the UNICOR factory on two different occasions.

20. Unfortunately, Defendant Sapko will not agree to give me my back pay and return me to my previous Pay Grade and restore my longevity (seniority). So I would gain nothing by this concession, and in fact, if I return under his present conditions -- I would not even be able to obtain my original Pay Grade at all!! Defendant Sapko has now informed me that I would be limited to a Pay Grade of Level 3, below my previous Level 2 (and actually Grade One because I was eligible for it the month after I was released from UNICOR). Which I would deem to be further retaliation.

21. During the time after my release from UNICOR and when I was trying to return to the factory, Defendant Klark was present at the time that Defendant Housler and Sapko persuaded me to withdraw my Grievance on the Factory conditions. I believe that he was involved in my not being returned to UNICOR and that because of his position as the Federal Prison Camp McKean UNICOR Factory (FPI); he was able to convince the staff at the FCI that I should not be given my job back.

22. Of real importance to all this is that at no time during my interaction with the Defendants, did any of them tell me that I was removed from UNICOR because of the piece of scrap

plastic. Though this was understood to be the reason that I was initially removed from UNICOR -- it was never cited to me as the reason for my having been permanently removed from my job. And at no time was I given a Memorandum as Policy requires to be done when the SOI at UNICOR makes such a determination to have me refused for employment -- as now alleged by Defendant Forsyth in her Declaration to the Court in support of the Defendants' Second Motion for Summary Judgement.

23. Also, now pursuant to the Discovery process, I have receive from the Defendants copies of Occupational Safety and Health Administration (OSHA) reports of the conditions of the Factory at the time period during which my Original Grievance filed. And they conclusively show that the Factory was reviewed by OSHA's personnel and found to be in violation of various work place standards. Some three dozen violations being listed in the initial Notice. (Many of which related to air quality).

24. In fact, the Notice references that the inspection was done pursuant to complaints received at OSHA's Office. And the specific person or persons are not identified and it is understandable, as I had a Grievance pending during this time period, that the Defendants would believe that I was someone who had filed a complaint with the OSHA Office. Though I do not know this for sure, it is circumstantial evidence that my removal from UNICOR, the OSHA factory inspection, and the Defendants refusal to return me to the factory (as well as the "finding" of the scrap piece of plastic) -- all occurred within some 30 days of each other.

25. While I believe that this Narrative of the Facts to

sufficient for the Defendants to prepare their Defense; I will state that I reserve the right to Supplement it and that I hereby incorporate by reference, as if set forth fully herein, all the Pleadings and supporting materials that I have filed and/or referenced. To wit, the Exhibits filed by both myself and the Defendants are included as proffers to the Court and will be relied upon by the Plaintiff in the Witness List and Exhibit List below.

26. And furthermore, Plaintiff expects to receive additional materials by way of Discovery and will Supplement the respective Narrative of Facts, Witness List, and Exhibit List as necessary. All in a continued effort to fully place his cause before the Court and to equitably have the Issues, Facts, Exhibits and other matters outlined for Trial. Or, more precisely, the Issues, Facts, Exhibits and Defense which are not disputed so that the Trial will be better organized and not waste precious judicial resources and the Jury's time and efforts.



WITNESS LIST WITH TESTIMONY SUMMARY

WITNESS:            ADDRESS:

1. Juan Davila-Bajana, P.O. Box 8000, Bradford, PA 16701.

SUMMARY: The above set forth Narrative of Witness Testimony and Exhibits to be adduced, are referenced as if set forth fully herein. And in addition to the above, Plaintiff will also state that the actual Grievance that is the underlying substance of this Complaint -- was not filed until after he had been removed from the UNICOR factory and was not being returned.

So the actual reason for his having been initially not returned is not absolutely dispositive of this Cause, as the Claim is retaliation. And the retaliation is for not having returned Plaintiff to his UNICOR job. And even if it was for the purpose as stated in the Second Motion to Dismiss -- it is still retaliatory simply because the Defendants still had not complied with the UNICOR policy and therefore they are not immune from suit.

2. Dave English FCI McKean, P.O. Box 5000, Bradford, PA 16701.

SUMMARY: Generally, Defendant English was the staff member who initially had asked me, inmate Aponte, and inmate Cortez, to leave UNICOR the evening that the "scrap piece of plastic" was found in the UNICOR factory. He will be able to testify as to what was found, who it was reported to, what their decision(s) were as to the course to be undertaken with respect to the "incident", and what

he recommended that should have been done because of the piece of scrap materials.

I also believe that Defendant English will be able to testify as to having seen me speaking to inmate Kevin Siggers and \_\_\_\_\_; both of whom had also filed Grievances on the factory conditions. In fact, they were both present when I withdrew my initial Grievance on the Factory conditions. Also, there were other inmates who had complained verbally to the staff and were contemplating filing of Grievances; whom he would also have seen me talking to.

This would have been a topic of discussion between him and the other Defendants, as well as other UNICOR staff.

3. Stephen Housler FCI McKean, P.O. Box 5000, Bradford, PA 16701.

SUMMARY: Defendant Housler was present at the factory on a number of occasions when he was to have been conducting safety inspections at the prison. At these times Defendant Housler would have personally witnessed the violations which were stated in my Grievance and ultimately itemized by OSHA in its Notice of Violations.

He will also be able to testify as to the "meeting" which resulted in my having withdrawn my Grievance on the conditions at the factory. Because of this he will be able to state that the other Defendants there were indicating that I could be returned to the factory. But that it was important to get the Grievance "resolved" right away. And while the Defendants may not have actually said: "drop your Grievance

and we'll give your job back." But the reality was that if Plaintiff had not withdrew his Grievance he would not have been returned to the factory.

In fact, the inspection at the factory for "complaints" by/to OSHA was clearly attributed to me.

4. Tim Holohan FCI McKean, P.O. Box 5000, Bradford, PA 16701.

SUMMARY: Defenant Holohan was also present on the factory floor at times when I was talking to other inmates. And while I cannot state that he could testify that he heard me talking to the other inmates about filing Grievances on the conditions at the factory, he did see me talking to inmates who also filed Grievances on the conditions at the UNCIOR factory.

After having been sent home and filing my Grievance on the factory conditions, and then withdrawing same; I appraoched Defendant Holohan at the mainline during the noon meal about having myself reinstated to the prison factory. This was after Defendant Forsyth had left the prison (and I had asked her to be returned to the factory); and he told me that he would check into it and see me later.

The following week he reported that "someone there doesn't like you and your not going to get your job back." He never referenced anything about having been denied for safety or security reasons. Nor did he tell me that this was a previous decision of Defendant Forsyth. In fact, he did not tell me who the "someone" is/was -- and at this time

Defendant Holohan will be able to be compelled to identify this individual(s) for the Jury. Which will enable them to better reach the retaliatory nature of the denial of Plaintiff's prison job; without justification.

Which this is when Plaintiff filed his second Grievance which contained the present retaliation Claim now going before the Jury.

5. Marty Sapko FCI McKean, P.O. Box 5000, Bradford, PA 16701.

SUMMARY: Defendant Sapko was the UNICOR Factory Manager and often walked the floor and also saw me speaking to the inmates who filed complaints about the factory conditions. Again, Plaintiff can not state that Defendant Sapko actually heard the conversation(s) and that they were about filing Grievances on the factory conditions. And, in fact, this may not have been relevant at the time of this observation; but once the Notice from OSHA came and the Grievances were filed by myself and other inmates -- it would have been extremely relevant.

And as I stated previously, Defendant Sapko will be able to testify that he was indicating to me at the meeting with co-defendants about my Grievance; he was indicating that it would help the process of my return to my factory job if I withdrew my Grievance. Again, I am not stating that he will testify that he specifically told me in certain words to withdraw my Grievance. But he will be able to testify that he strongly indicated that this was a "sticking

point" in Plaintiff being returned to his factory job.

At this time, in what Plaintiff deems to have been a response to his Resopnse to the Defendants latest Motion for Summary Judgement; Defendant Sapko, who is now the SOI at FCI McKean, has twice called Plaintiff to the UNICOR factory and offered him employment at the factory. Both times there was no mention of Plaintiff having been denied employment at the factory pursuant to a previous decision that he posed a security threat.

However, both times Defendant Sapko has refused to give Plaintiff his back pay for the time that he has been denied his facotry job; and also has refused to return Plaintiff at his previously held Grad with his Longevity. And the last time Planitiff was informed that not only would he not give him his past pay -- he also has now instituted a policy that bars Plaintiff from ever again even reaching his previous Grade.

Defendant Sapko will testify also that Plaintiff has declined to be placed in the factory under those conditions and without being given his lost pay and seniority.

6. Robert Klark FCI McKean, P.O. Box 5000, Bradford, PA 16701.

SUMMARY: Defendant Klark was mainly at the Camp facility and basically did not come to the FCI much. Though there were times that he was there as the two factorys were interrelated and this caused him to have business at the FCI from time to time. And it is possible that he will be able to testify

that he had seen Plaintiff in conversation with other inmates who field Grievances about the conditions at the factory.

He was also there when the Grievance that I had filed on the conditions at the factory was withdrawn. And I feel that he will be able to testify that the other individuals, especially Defendant Sapko, clearly stated that it was important to have the Grievance resolved, specifically "taken care of", before I was returned to work. Though Defendant Sapko stated this as if I was going back to work, but in the mean time I should resolve my Grievance.

And he will also be able to testify that the other Defendants were very nice and cordial and kept trying to get me to agree that I was withdrawing the Grievance on my own. When it was obvious that the UNICOR employees were more worried about the Grievance being withdrawn than my being returned to work.

7. Deborha Forsyth FCI Jessup, GA

SUMMARY: As a general matter, I am not sure what exactly Defendant Forsyth will testify to. At this time Plaintiff intends to call her mainly to impeach her with the testimony of other witnesses and through the introduction of Exhibits.

But Plaintiff will be testifying to his inquires of Defendant Forsyth as to his being returned to his factory job. In fact, Plaintiff will be entering Exhibits, which are already part of the Record as Exhibits to pleadings filed; his Administrative Remedies which clearly show that Defendant Forsyth has stated that she was approached by

me in reference to being returned to the factory.

Yet she has now filed a Declaration stating that I never approached her for my job back. And she also states other falsities which have been exposed in Plaintiff's Response to the Second Motion to Dismiss.

8. OTHER WITNESSES: Plaintiff will supplement this Witness List and any relevant Summaries as promptly as possible.

EXHIBIT LIST

<u>EXHIBIT</u>	<u>DESCRIPTION:</u>
P-1	FIRST GRIEVANCE OF FACTORY CONDITIONS.
P-5	SECOND GRIEVANCE OF RETALIATION FOR NOT BEING RETURNED TO UNICOR FACTORY.
P-10	OSHA NOTICE OF VIOLATIONS.
P-15	OSHA REPORT OF INSPECTION.
P-20	DECLARATION OF DEFENDANT SAPKO (11/21/06).
P-22	DECLARATION OF DEFENDANT ENGLISH (11/17/06).
P-24	DECLARATION OF DEFENDANT FORSYTH (11/08/06).
P-26	DECLARATION OF DEFENDANT HOLOHAN (11/16/06).
P-30	PLAINTIFF'S ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL FROM BOP SENTRY SYSTEM.
P-32	PLAINTIFF'S INMATE DISCIPLINARY DATA CHRONOLOGICAL DISCIPLINARY RECORD.
P-34	PLAINTIFF'S UNICOR WORK PERFORMANCE EVALUATION RECORD (04/06/01).
P-36	PLAINTIFF'S UNICOR "SPECIAL ACHIEVEMENT AWARD", SIGNED BY DEFENDANT FORSYTH (06/04/99).
P-38	PLAINTIFF'S UNICOR "SPECIAL ACHIEVEMENT AWARD", SIGNED BY DEFENDANT FORSYTH (06/08/01).
P-40	PLAINTIFF'S UNICOR "SPECIAL LETTER OF COMMENDATION", SIGNED BY DEFENDANT FORSYTH, (02/02/01).
P-42	PLAINTIFF'S UNICOR "AWARD OF EXCELLENCE", SIGNED BY DEFENDANT FORSYTH, (11/02/01).
P-45	PLAINTIFF'S INCIDENT REPORT AND RELATED PAPERS FOR VIOLATING BOP POLICY.
P-50	FEDERAL PRISON INDUSTRIES PROGRAM STATEMENT.



P-55 PLAINTIFF'S FIRST DISCOVERY REQUEST.

P-60 DEFENDANTS' FIRST SET OF INTERROGATORIES.

P-62 PLAINTIFF'S ANSWERS TO DEFENDANTS' FIRST INTERROGATORIES.

P-64 PLAINTIFF'S FIRST SET OF INTERROGATORIES.

P-66 DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES.

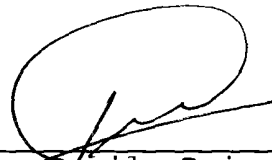
P-68 DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT.

P-70 DECLARATION OF INMATE *AARON FARLEY (02124107)*.

DECLARATION AND CERTIFICATE OF SERVICE

I, Juan Davila-Bajana, hereby declare and affirm under the penalty of perjury, pursuant to 28 USC §1746(2), that the foregoing pleading is true and correct to the best of my knowledge and recollection, and that I served a true and correct Original by first-class postage prepaid surrender to the prison officials, this 15th day of April, 2007, to:

1. Paul D. Kovac  
Assistant U.S. Attorney for  
Western District of Pennsylvania  
700 Grant Street  
Suite 4000  
Pittsburgh, PA 15219



Juan Davila-Bajana, Pro Se  
Fed. Reg. No. 47580-053  
FCI McKean  
P.O. Box 8000  
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Juan Davila-Bajana  
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April 15, 2007

Clerk of the Court  
U.S.D.C. for W.D. PA  
P.O. Box 1820  
Erie, PA 16501

RE: DAVILA V. HOLOHAN, ET AL., CIVIL ACTION NO. 04-253(E).

Dear Sirs:

Please find enclosed my Exhibit A to my Show of Cause filed with the Court last week on the 11th of April, 2007.

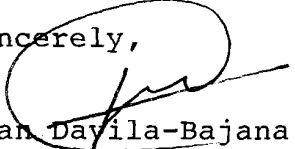
As referenced in same I am submitting the Court Ordered Narratives and other filings for Docketing.

At this time I believe that this should bring me within the desired procedural position that the Court wishes.

As always, I thank you for your time and efforts in assisting me in filing my pleadings with the Court. And should either you or the Court require more, please contact me at the above address and I will respond in kind promptly.

I would make one request from you though, as I am preparing for Trial at this time I would respectfully ask that you forward me an updated Docket Sheet for my file. I believe that this will be indispensable for Trial.

Sincerely,

  
Juan Davila-Bajana

enc. YES -- PRETRIAL NARRATIVE.

cc. FILE; PAUL KOVAC, AUSA.